

DEC 17 2001

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

William F. Etter
Raymond F. Clary
Etter, McMahon, Lamberson & Clary, P.C.
421 W. Riverside Avenue, Suite 1600
Spokane WA 99201
(509) 747-9100

Attorneys for Defendant Spokane Downtown Foundation

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

NUVEEN QUALITY INCOME MUNICIPAL
FUND, INC; NUVEEN PREMIUM INCOME
MUNICIPAL FUND 4, INC.; STRONG
MUNICIPAL BOND FUND, INC.; SMITH
BARNEY MUNICIPAL FUND LIMITED
TERM; SMITH BARNEY MUNICIPAL
HIGH-INCOME FUND; and VANGUARD
HIGH-YIELD TAX-EXEMPT FUND; and
U.S. BANK TRUST NATIONAL
ASSOCIATION ...

Plaintiffs,

v.

PRUDENTIAL SECURITIES
INCORPORATED, a Delaware corporation;
WALKER PARKING
CONSULTANTS/ENGINEERS, INC., a
Michigan corporation; FOSTER PEPPER &

NO. CS-01-0127-EFS
Consolidated with
CS-01-0128-EFS

SPOKANE DOWNTOWN
FOUNDATION'S ANSWER
AND DEFENSES TO CITY
OF SPOKANE'S CROSS-
CLAIMS

SPOKANE DOWNTOWN
FOUNDATION'S ANSWER
AND DEFENSES TO CITY OF
SPOKANE'S CROSS-CLAIMS-1

ETTER, MCMAHON, LAMBERSON & CLARY, P.C.
1600 PAULSEN CENTER, 421 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201-0401 (509) 747-9100

1 SHEFELMAN PLLC, a Washington
2 professional limited liability company;
3 SPOKANE DOWNTOWN FOUNDATION, a
4 Washington corporation; PRESTON
5 GATES & ELLIS LLP, a Washington limited
6 liability partnership; CITIZENS
7 REALTY COMPANY, a Washington
8 corporation; LINCOLN INVESTMENT
9 COMPANY OF SPOKANE, a Washington
10 corporation; RPS MALL, L.L.C., a
11 Washington limited liability company; RPS
12 II, L.L.C., a Washington limited liability
13 company; RWR MANAGEMENT, INC., a
14 Washington corporation, doing business as
15 R. W. ROBIDEAUX AND COMPANY; CITY
16 OF SPOKANE, WASHINGTON, a first-
17 class charter city of the State of
18 Washington; SPOKANE PUBLIC PARKING
19 DEVELOPMENT AUTHORITY, an
20 unregistered Washington corporation, doing
21 business as RIVER PARK SQUARE
22 PARKING,

23 Defendants.

24 CITY OF SPOKANE,

25 Third-Party Plaintiff,

26 v.

27 ROY KOEGEN and ANNE K. KOEGEN, a
28 marital community, and PERKINS COIE,
29 LLP,

30 Third-Party Defendants.

31 The SPOKANE DOWNTOWN FOUNDATION (Foundation)
32

responds to and answers the City of Spokane's Cross-Claims as follows:

SPOKANE DOWNTOWN
FOUNDATION'S ANSWER
AND DEFENSES TO CITY OF
SPOKANE'S CROSS-CLAIMS-2

ETTER, McMAHON, LAMBERSON & CLARY, P.C.
1600 PAULSEN CENTER, 421 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201-0401 (509) 747-9100

ANSWER

1.1 - 1.2. This Defendant admits the Developers¹ owned River Park Square and adjacent Parking Garage, at points relevant to the subject action. Ostensibly, at some point, the Developers decided to re-develop River Park Square and the Parking Garage. However, this Defendant lacks knowledge with respect to paragraphs 1.1 and 1.2.

1.3 - 1.6. This Defendant lacks knowledge.

1.7 - 1.10. This Defendant lacks knowledge.

1.11 - 1.14. This Defendant admits that the City passed certain resolutions and ordinances in connection with the River Park Square Garage, and that Roy Koegen of Perkins Coie, LLP worked as bond counsel for the City in connection with River Park Square and the renovation and expansion of the Parking Garage. Further, this Defendant lacks knowledge with respect to paragraphs 1.11 through 1.14.

¹ The Developers is interpreted as a shorthand method to refer to Citizens Realty Company, Lincoln Investment Company of Spokane, River Park Square LLC, and RPS II LLC, or an appropriate associated entity, as it does not appear to be defined in the City's Cross-Claims. The City submitted an Answer and Cross-Claim in the consolidated case by U.S. Bank Trust National Association, and this Answer is intended to apply to those as well.

SPOKANE DOWNTOWN
FOUNDATION'S ANSWER
AND DEFENSES TO CITY OF
SPOKANE'S CROSS-CLAIMS-3

ETTER, McMAHON, LAMBERSON & CLARY, P.C.
1600 PAULSEN CENTER, 421 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201-0401 (509) 747-9100

1
2 1.15 - 1.19. This Defendant admits that Walker is considered an expert in
3
4 consulting and engineering aspects of public parking garages, and
5
6 associated assessments and projections. Further, this Defendant admits
7
8 that Walker was retained by the City and did render consulting services
9
10 and analyses in connection with the River Park Square Parking Garage,
11
12 which included projections and report(s) on financial feasibility matters.
13
14 Further, this Defendant lacks knowledge in respect to paragraphs 1.15
15 through 1.19.

16 1.20 - 1.22. This Defendant lacks knowledge.

17
18 1.23 - 1.24. This Defendant lacks knowledge.

19
20 1.25. This Defendant admits that the Walker Feasibility Analysis
21
22 made revenue projections, but lacks knowledge with respect to the
23
24 remaining contentions.

25
26 1.26. This Defendant admits that Walker performed a public use
27
28 parking study for the Parking Garage, and that it was issued. This
29
30 Defendant defers to the study for its content and conclusions. This
31
32 Defendant lacks knowledge in respect to paragraph 1.26.

1.27. - 1.35. This Defendant lacks knowledge.

1 1.36. - 1.38. This Defendant admits that the City and Developers
2 worked together with respect to the Parking Garage renovation and
3 expansion; they had roles which are or were defined by certain written
4 instruments; and certain resolutions and ordinances were proposed and
5 adopted. Further, this Defendant lacks knowledge with respect to
6 paragraphs 1.36 through 1.38.
7
8
9
10

11 1.39. This Defendant admits that Prudential Securities participated
12 in the project as an underwriter for bonds; certain Prudential
13 representatives testified at public hearings at various points; and certain
14 representatives for the Developers testified at public hearings at various
15 points. This Defendant lacks knowledge with respect to paragraph 1.39.
16
17
18
19

20 1.40. This Defendant lacks knowledge, and defers to the totality of
21 the Transcripts of Spokane City Council Proceedings.
22
23

24 1.41. - 1.43. This Defendant admits that at various points there was
25 opposition to the City's participation in the Parking Garage project, not
26 unlike other efforts toward community development; and the City retained
27 consultants to prepare financial studies. This Defendant lacks knowledge
28 in respect to paragraphs 1.41 through 1.43.
29
30
31
32

1.44. This Defendant lacks knowledge.

1 1.45. This Defendant lacks knowledge.

2 1.46. This Defendant lacks knowledge.

3
4 1.47. This Defendant admits that IRS Revenue Ruling 63-20
5
6 financing provides tax-exemption, and relates to public financing and bond
7
8 issuance by a non-profit. Further, this Defendant admits that the project
9
10 contemplated and provides for the Parking Garage to be transferred to the
11 City, at no cost.

12
13 1.48. - 1.49. This Defendant lacks knowledge.

14
15 1.50. This Defendant lacks knowledge, and defers to the Transcript
16
17 of Spokane City Council Proceedings for the November 25, 1996,
18 meeting.

19
20 1.51. This Defendant lacks knowledge.

21
22 1.52. - 1.57. This Defendant admits that Ordinance C-31823 was
23
24 adopted, and defers to its terms and appropriate legislative history for its
25 meaning and effect.

26
27 1.58. - 1.59, and 2.57 (sic). This Defendant defers to the
28
29 Ordinance, all appropriate Transcripts of City Council Proceedings and
30
31 appropriate legislative history for the meaning and effect of Ordinance C-
32 31823.

1 1.60. This Defendant lacks knowledge.

2 1.61. - 1.66. This Defendant admits that Ordinance C-31823 was
3
4 proposed and enacted. As previously indicated, this Defendant defers to
5
6 the Ordinance, appropriate legislative history and appropriate Transcripts
7
8 of City Council Proceedings for its meaning and effect.

9 1.67. This Defendant admits that parking revenues were projected
10
11 to be sufficient to meet the necessary obligations, but lacks knowledge in
12
13 respect to the remaining contentions.

14 1.68. - 1.70. This Defendant lacks knowledge.

15 1.71. - 1.72. This Defendant admits.

16 1.73. This Defendant defers to the subject instrument (referred to
17
18 as proposed lease agreement) for its terms.
19
20

21 1.74. - 1.76. This Defendant lacks knowledge.

22 1.77. This Defendant defers to the reported opinion in *Cleen v. City*
23
24 of *Spokane* for its content and effect.
25
26

27 1.78. This Defendant admits that the City and Authority approved of
28
29 the Parking Facility Lease Agreement, and defers to the instrument and
30
31 related instruments for content and effect.
32

1 1.79. - 1.80. This Defendant admits that the experts involved
2 expressed opinions supporting the transaction, viability of the garage
3 aspect of the transaction and the concomitant issuance of the bonds.
4 Further, this Defendant lacks knowledge in respect to paragraphs 1.79
5 and 1.80.
6
7
8

9 1.81. This Defendant admits that the Bonds were issued and
10 proceeds were treated in the manner provided by the operative
11 instruments, contained in the Bond transaction Transcript of Proceedings.
12
13
14

15 1.82. - 1.86. This Defendant lacks knowledge.
16

17 1.87. This Defendant lacks knowledge.
18

19 1.88. This Defendant admits.
20

21 1.89. - 1.92. This Defendant lacks knowledge.
22

23 1.93. This Defendant lacks knowledge.
24

25 1.94. This Defendant admits that the Bonds have been
26 downgraded twice by Standard & Poors, and defers to Standard & Poors
27 reports or publications for the factors it considered in arriving at the
28 downgrades.
29
30

31 1.95. This Defendant lacks knowledge.
32

1.96. - 1.100. This Defendant lacks knowledge.

1 1.101. This Defendant admits that the Authority has requested
2 loans. This Defendant lacks knowledge with respect to the remaining
3 contentions.
4

5
6 1.102 - 1.103. This Defendant admits that the City's bond rating has
7 been downgraded, but lacks knowledge with respect to the remaining
8 contention in paragraphs 1.102 and 1.103.
9
10

11 1.104. - 1.108. This Defendant admits that the City has declined to
12 make loans; the Developers sought mandamus; an order of mandamus
13 was issued; the order was appealed and the Washington State Supreme
14 Court issued a decision. This Defendant defers to the Court's written
15 decision for its content and effect. Further, this Defendant lacks
16 knowledge in respect to paragraphs 1.104 through 1.108.
17
18
19
20
21

22 CLAIMS

23 **First Claim - Declaratory Relief in Re: Scope of Loan Pledge** 24 **(Against all Parties).** 25

26 2.1. This Defendant incorporates the preceding paragraphs.
27

28 2.2. - 2.14. This Defendant lacks knowledge, in respect to the
29 Foundation, and therefore denies the City's contentions in respect to the
30 Foundation. Further, the Foundation retains and maintains each of its
31 affirmative defenses.
32

1 **Second Claim - Alternative Declaratory Relief in Re: Loan Pledge**
2 **(Against all Parties)**

3 2.15. This Defendant incorporates the preceding paragraphs.
4

5 2.16. - 2.29. This Defendant lacks knowledge, and therefore denies
6
7 in respect to the Foundation. This Defendant retains and maintains each
8
9 of its affirmative defenses.

10 **Third Claim - Professional Negligence and Negligent**
11 **Misrepresentation (Against Defendant Walker)**
12

13 2.30. This Defendant incorporates the preceding paragraphs.
14

15 2.31. - 2.34. These allegations pertain to another party, and no
16
17 response by this defendant is required.

18 **Fourth Claim - Breach of Contract (Against Defendant Walker)**
19

20 2.35. The preceding paragraphs are incorporated.
21

22 2.36. - 2.39. No response is required.
23

24 **Fifth Claim - Indemnification (Against Defendant Walker)**
25

26 2.40. The preceding paragraphs are incorporated.
27

28 2.41. - 2.43. No response is require.
29

30 **Sixth Claim - Mistake and Commercial Frustration (Against the**
31 **Authority and Developers)**
32

2.44. The preceding paragraphs are incorporated.

1 2.45. - 2.53. No response is required.

2 **Seventh Claim: Breach of Duties of "Public/Private Partner" (Against**
3 **the Developers)**

4
5 2.54. The preceding paragraphs are incorporated.

6
7 2.55. - 2.68. No response is required.

8 **DENIAL AND AMENDMENT**
9

10 2.69. To the extent that any allegation in the City's Cross-Claims
11
12 allegedly supports liability against the Foundation and the same was not
13
14 previously denied, the same is hereby denied. Further, this Defendant
15
16 reserves the right to amend.

17 **ADDITIONAL AND AFFIRMATIVE DEFENSES**
18

19 By way of further response and for additional and affirmative
20
21 defenses this Defendant submits:

22
23 1. The City's Cross-Claims fail to state a claim against this
24
25 Defendant upon which relief can be granted.

26
27 2. The City's Cross-Claims are barred by applicable statutes of
28
29 limitation, and laches.

30 3. The City's losses, if any, were caused by factors and the acts or
31
32 omissions of other parties, or entities and were not caused by any act or
omission of this defendant.

1 4. On information and belief, as alleged by the City, certain claims
2 are barred or limited by the doctrine of res judicata or collateral estoppel.
3

4 5. The transaction documents provided for express allocation of risk
5 and responsibility between the parties.
6

7 6. The City's Cross-Claims are barred by lack of reasonable care or
8 reduced by comparative fault.
9

10 7. Plaintiffs claims are alternatively barred by ratification, estoppel
11 or waiver.
12

13 8. The transaction documents provided for express allocation of risk
14 and responsibility between the parties.
15

16 9. This Defendant is entitled to all defenses applicable to non-profit
17 entities.
18

19 10. Alternatively, the City's claims, or the alleged losses, resulted
20 from mutual mistake.
21

22 11. Any damage suffered by the City was the proximate result of
23 conduct or negligence of persons or entities other than this defendant,
24 and for whom this defendant is not responsible.
25

26 12. Alternatively, if any aspect of the City's contentions results in
27 judgment or verdict affecting or against the Foundation, the Foundation is
28
29
30
31
32

1 entitled to allocation of fault, liability or judgment against the principal
2 actor(s) or party(ies).
3

4 13. The Cross-Claims lack jurisdiction.
5

6 **PRAYER FOR RELIEF**
7

8 WHEREFORE, having fully responded to the City's Cross-Claims, this
9 Defendant requests the Court to grant the following relief:
10

11 1. Entry of a final judgment dismissing all claims against this
12 Defendant with prejudice and without an award of damages or other relief
13 against this Defendant.
14


15 2. Allocation of fault or liability and judgment against the principal
16 actor(s) or party(ies).
17

18 3. An award of reasonable fees and expenses incurred herein,
19 including reasonable attorney's fees.
20

21 4. Such other relief as the Court may deem just.
22

23 RESPECTFULLY SUBMITTED THIS 17th day of December, 2001.
24

25 ETTER, McMAHON, LAMBERSON & CLARY, P.C.
26

27 
28
29 WILLIAM F. ETTER, WSBA#9158
30 RAYMOND F. CLARY, WSBA#13802
31 Attorneys for Spokane Downtown Foundation
32

SPOKANE DOWNTOWN
FOUNDATION'S ANSWER
AND DEFENSES TO CITY OF
SPOKANE'S CROSS-CLAIMS-13

ETTER, McMAHON, LAMBERSON & CLARY, P.C.
1600 PAULSEN CENTER, 421 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201-0401 (509) 747-9100